

RELEVANT PROCEDURAL HISTORY

On April 9, 2012, the Plaintiff filed a Complaint against Greenbriar alleging discrimination under Title III of the Americans with Disabilities Act (“ADA”). Both Plaintiff and Defendant filed Cross Motions for Summary Judgment. On September 27, 2013, this Court entered an Order granting in part and denying in part Plaintiff’s Motion for Summary Judgment. On October 11, 2013, the Plaintiff filed a Motion for Attorney’s Fees pursuant to Fed.R.Civ.P 54(d)(2). Defendant now requests that this Court hold an evidentiary hearing to allow the Defendant an opportunity to present evidence in opposition to Plaintiff’s attorneys’ fees request, or at least allow Defendant to submit affidavits in opposition to the fees Plaintiff is claiming.

ARGUMENT AND CITATION TO AUTHORITY

Rule 54(d)(2)(C) provides that “[o]n request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the [attorney’s fees] motion. Fed.R.Civ.P. 54(d)(2)(C). Rule 54(d)(2)(C) is not discretionary; it says that the court “*shall* afford an opportunity for adversary submissions.” U.S. v. Skanska USA Bldg., Inc., 209 Fed.Appx. 880, 884 (2006) quoting Fed.R.Civ.P. 54(d)(2)(C) (emphasis supplied).

In Skanska, the United States Court of Appeals for the Eleventh Circuit found that the district court had erred when it awarded attorney's fees to the opposing party without giving Skanska the opportunity for adversary submissions in violation of the statute. The Court of Appeals held that only after Skanska had been permitted to offer any relevant evidence it had could the district court properly calculate the appropriate amount of fees Skanska should have paid. Skanska, 209 Fed.Appx. at 884 (emphasis added). It further held that Skanska should have been afforded the opportunity to offer affidavits from local attorneys swearing that the fees charged by the plaintiff's lawyers were excessive; or the opportunity to offer evidence that the plaintiff's lawyers spent more hours than was necessary in working the case. Id.

This Court should adhere to the Eleventh Circuit's opinion in Skanska and grant Defendant's Motion for an Evidentiary Hearing pursuant to Fed.R.Civ.P. 54(d)(2)(C).

WHEREFORE, Defendant GREENBRIAR OF DAHLONEGA SHOPPING CENTER, INC. respectfully requests that this Court GRANT its Motion for an Evidentiary Hearing on Plaintiff's Motion for Attorney's Fees and allow Defendant an opportunity for adversary submissions.

Respectfully submitted,

DOWNEY & CLEVELAND, LLP

By: /s/ G. Lee Welborn

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing pleading upon opposing counsel of record using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record as follows:

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This 15th day of October, 2013.

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